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18
19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF NEVADA**

SHAWN SWILLEY,

Plaintiff,

v.

RENTGROW, INC.; and CLEARA,
LLC,

Defendants.

Case No.: 2:23-cv-00860-ART-EJY

**JOINT MOTION TO EXTEND
DISCOVERY DEADLINES
(FOURTH REQUEST)**

Plaintiff SHAWN SWILLEY (“Plaintiff”), Defendant RENTGROW, INC.,
 (“RentGrow”) and Defendant Cleara, LLC (“Cleara”) (together, the “Parties”),

1 through each Parties' counsel of record, hereby file this Joint Motion to Extend
2 Discovery Deadlines (Fourth Request) (the "Motion"). This Motion is filed in
3 accordance with LR 26-3. For the reasons set forth below, the Parties respectfully
4 request this Court extend the current discovery deadlines by forty-five (45) days.
5 This is the second motion to extend the discovery deadlines.

6 **I. DISCOVERY COMPLETED TO DATE**

7 1. One September 5, 2023, the Joint Discovery Plan and Scheduling Order
8 (the "Discovery Plan") was entered by the Court. [Dkt. No. 15].

9 2. On August 30, 2023, Plaintiff and RentGrow exchanged Initial
10 Disclosure Statements Pursuant to Fed. R. Civ. P. 26(a)(1).

11 3. On August 21, 2023, Plaintiff propounded his First Set of Requests for
12 Production of Documents, First Set of Requests for Admissions, and First Set of
13 Interrogatories on RentGrow.

14 4. On August 22, 2023, RentGrow propounded its First Set of Requests
15 for Production of Documents, First Set of Requests for Admissions, and First Set of
16 Interrogatories on Plaintiff.

17 5. RentGrow responded to Plaintiff's First Set of Discovery Requests on
18 September 29, 2023, and Plaintiff responded to RentGrow's First Set of Discovery
19 Requests on October 5, 2023.

1 6. On October 20, 2023, Plaintiff and RentGrow filed their Joint Motion
2 to Extend Discovery Deadlines (First Request). The joint motion was granted the
3 same day.

4 7. On October 23, 2023, Plaintiff filed his Amended Complaint and
5 Demand for Jury trial adding Cleara, LLC as a defendant.

6 8. On November 17, 2023, RentGrow filed its Emergency Motion for
7 Protective Order. Plaintiff's Response to RentGrow's Emergency Motion was filed
8 November 28, 2023.

9 9. On December 1, 2023, RentGrow filed its Answer to Plaintiff's
10 Amended Complaint.

11 10. On December 4, 2023, the Court heard RentGrow's Emergency Motion
12 for Protective Order. RentGrow's motion was subsequently granted.

13 11. On December 19, 2023, Plaintiff and RentGrow stipulated to extend the
14 discovery deadlines by an additional ninety (90) days.

15 12. On December 20, 2023, Cleara filed its Motion to Dismiss. Plaintiff's
16 Response to Cleara's Motion to Dismiss was filed on January 3, 2024 and Cleara's
17 Reply to Plaintiff's Response was filed on January 10, 2024. The Motion to Dismiss
18 is currently pending.

1 13. On December 21, 2023, Plaintiff propounded his First Set of Requests
2 for Production of Documents, First Set of Requests for Admissions, and First Set of
3 Interrogatories on Cleara.

4 14. On January 4, 2024, Plaintiff filed their Motion to Compel Production
5 of Documents from RentGrow. RentGrow's Response to Plaintiff's Motion to
6 Compel was filed on January 18, 2024 and Plaintiff's Reply to RentGrow's
7 Response was filed on January 25, 2024.

8 15. On January 24, 2024, Cleara served its responses to Plaintiff's First Set
9 of Requests for Admissions.

10 16. On January 30, 2024, the parties attended the deposition of Plaintiff
11 Shawn Swilley.

12 17. On February 5, 2024, Plaintiff served his Amended Notice of
13 Deposition for Cleara's FRCP 30(b)(6) representative. The deposition was noticed
14 to take place on March 4, 2024.

15 18. On February 7, 2024, the Court heard Plaintiff's Motion to Compel
16 Production of Documents. Plaintiff's motion was subsequently granted in part and
17 denied in part.

18 19. On February 8, 2024, Cleara served its responses to Plaintiff's First Set
19 of Interrogatories and First Set of Requests for Production of Documents.
20

1 20. On February 12, 2024, Cleara filed its Motion to Stay Discovery.
2 Cleara's Amended Motion to Stay Discovery was then filed on February 20, 2024.
3 Plaintiff's Response to Cleara's Amended Motion to Stay Discovery was filed on
4 March 4, 2024 and Cleara's Reply to Plaintiff's Response was filed on March 11,
5 2024.

6 21. On February 24, 2024, Cleara served its Initial Disclosure Statement
7 Pursuant to Fed. R. Civ. P. 26(a)(1).

8 22. On February 27, 2024, Cleara filed its Emergency Motion for
9 Protective Order. Plaintiff's Response to Cleara's Emergency Motion was filed on
10 March 4, 2024.

11 23. On February 29, 2024, the parties attended the deposition of
12 RentGrow's FRCP 30(b)(6) representative.

13 24. On March 14, 2024, the Court heard Cleara's Motion to Stay Discovery
14 and Emergency Motion for Protective Order. The Motion to Stay Discovery was
15 subsequently denied, and the Emergency Motion for Protective Order was granted
16 in part and denied in part.

17 25. On March 29, 2024, Plaintiff served his Second Amended Notice of
18 Deposition for Cleara's FRCP 30(b)(6) representative. The deposition was noticed
19 to take place on May 2, 2024.
20

1 26. On April 12, 2024, the parties attended a discovery hearing, at which
2 time the Court extended the discovery deadlines by an additional sixty (60) days.

3 27. On April 18, 2024, Plaintiff served his Third Amended Notice of
4 Deposition for Cleara's FRCP 30(b)(6) representative. The deposition was noticed
5 to take place on May 7, 2024.

6 28. On May 3, 2024, Plaintiff served his Fourth Amended Notice of
7 Deposition for Cleara's FRCP 30(b)(6) representative. The deposition was noticed
8 to take place on May 14, 2024.

9 29. On May 7, 2023, Cleara served its First Supplement to Initial
10 Disclosure Statement Pursuant to Fed. R. Civ. P. 26(a)(1).

11 30. On May 23, 2024, Plaintiff served his Fifth Amended Notice of
12 Deposition for Cleara's FRCP 30(b)(6) representative. The deposition was noticed
13 to take place on June 11, 2024.

14 **II. DISCOVERY TO BE COMPLETED**

15 1. The deposition of Defendant Cleara, LLC's FRCP 30(b)(6)
16 representative.

17 2. Additional written discovery

18 3. Initial expert disclosures

19 4. Rebuttal expert disclosures

20 5. Expert depositions

1 **III. REASONS WHY DISCOVERY WAS NOT COMPLETED**
2 **WITHIN TIME LIMITS AND NEED FOR DISCOVERY TO BE EXTENDED**

3 This is the second joint motion to extend discovery deadlines and the fourth
4 request overall. Since discovery in this matter commenced, the Parties have been
5 diligently engaged in conducting all necessary discovery. The parties have all
6 propounded to and responded to initial rounds of written discovery, and have also
7 successfully completed the depositions of both Plaintiff and RentGrow's FRCP
8 30(b)(6) representative.

9 Unfortunately, the parties have been unable to complete the deposition of
10 Cleara's FRCP 30(b)(6) representative. On May 13, 2024, Cleara's counsel
11 informed us that Cleara's representative had fallen ill and was unable to attend the
12 deposition noticed for May 14, 2024. Plaintiff's counsel re-noticed the deposition
13 for June 11, 2024. On May 24, 2024, counsel for Cleara confirmed that the Cleara
14 representative was available for their deposition on June 11, 2024. On June 7, 2024,
15 counsel for Cleara informed Plaintiff's counsel that Cleara's representative had been
16 admitted to the hospital. On June 10, 2024, Cleara's counsel confirmed that Cleara's
17 representative was still in the hospital and would be unable to attend his deposition.

18 The parties have continued to work together and have attempted to reschedule
19 this deposition more than once, however, the condition of Cleara's representative
20 has recently worsened, and they have since been admitted to hospital for continued
medical care. It is currently unknown if the representative will be able to return to

1 work or if Cleara will need to produce an alternative FRCP 30(b)(6) representative
2 in order to complete the planned deposition. The parties are in agreement that the
3 deposition of Cleara's representative needs to go forward before initial expert
4 disclosures can be made, and are continuing to work together to try and facilitate
5 rescheduling the deposition once the representative's medical status has been
6 confirmed. The additional time requested is not for the purpose of hindrance or
7 delay, but rather, to ensure that the parties have a reasonable opportunity to conduct
8 the remaining party deposition in this case, as well as to allow for their experts to
9 consider that testimony before authoring any written reports.

10 As a general statement, the parties are all in agreement that retained experts
11 request at least one month in order to properly research, draft, and finalize any such
12 expert report. Therefore, despite the diligence on the part of the Parties in completing
13 necessary discovery, the Parties anticipate that without the additional time being
14 requested, that compliance with the existing expert disclosure deadlines will not be
15 practicable and may harm the Parties' abilities to adequately support their claim(s)
16 and/or defense(s). The Parties are not requesting any extension of any deadlines that
17 have already passed.

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IV. PROPOSED SCHEDULE FOR COMPLETING DISCOVERY

EVENT	EXISTING DEADLINE	PROPOSED NEW DEADLINE
Last Day to File Motion to Amend Pleadings/Add Parties	CLOSED	CLOSED
Initial Expert Disclosures	July 15, 2024	August 29, 2024
Rebuttal Expert Disclosures	August 30, 2024	October 14, 2024
Completion of Discovery	October 14, 2024	November 28, 2024
Dispositive Motions	November 29, 2024	January 13, 2025

WHEREFORE, the Parties respectfully request that the Court extend the current discovery deadlines by forty-five (45) days.

Dated: June 21, 2024

COZEN O'CONNOR

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IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE

Dated: June 21, 2024